IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5076 of 1996
TO
FIRST APPEALNo 5132 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DEFENCE ESTATE OFFICER

Versus

LILABEN W/O GOVINDBHAI PRABHUDAS

Appearance:

MR JAYANT PATEL, Standing Counsel for the Central Government for Appellants

M/S AJ PATEL AND AB MUNSHI WITH MR JAYDEEP P PATEL for Respondent No. 1

MR SJ DAVE, AGP, for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT and
MR JUSTICE C.K.BUCH

Date of decision: 16/04/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. This group of appeals has been filed for and on behalf of the acquiring body under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

2. The pertinent facts, in brief, are as under:

2.1 The lands in question are situated in village Harni, District Baroda, on the outskirts of the city of Baroda, and were acquired for setting up a defence unit for the Air Force (Surface-to-Air Guided Weapons Complex). The relevant notification under section 4 was published on 25th September 1985, and possession was taken by the acquiring body on 28th May 1986.

2.2 After following the requisite procedure, the Land Acquisition Officer declared his award under section 11 of the said Act on 17th November 1986, whereby he offered Rs.55000/- per hectare, Rs.60000/- per hectare and Rs.70000/- per hectare, depending upon his classification of the acquired lands in different categories. The claimants-land holders, not having accepted the awards, preferred their References under section 18 of the said Act, whereby they claimed a market value of Rs.3.50 per square feet. The Reference Court, after recording evidence, determined the market value at Rs.1,50,000/per hectare (Rs.15/- per square meter) in respect of two specific survey numbers viz. Survey No.688 and 688/1/B, and at the rate of Rs.1,40,000/- per hectare (Rs.14/- per square meter) for all the other survey numbers under acquisition.

2.3 It is this determination by the Reference Court under section 18 of the said Act, which is the subject matter of the present appeals.

3. We shall first deal with the contentions of the respective parties as regards the determination of the market value of the acquired lands. Learned counsel for the appellant first contended that the Reference Court was in error in not relying upon Exhibits 127 to 132. These six exhibits are sale deeds which are dated respectively, 14th February 1985, 13th February 1985, 5th June 1985, 5th June 1985, 4th November 1985 and 4th November 1985. In this context it was emphasized that the respective dates of the sale deeds are in a close proximity to the date of section 4 notification viz. 25th September 1985. These sale deeds reflect a sale price respectively, of about Rs.7000/- per acre,

Rs.6000/per acre, Rs.15000/- per acre, Rs.15000/- per acre, Rs.32800/- per acre and Rs.32800/- per acre.

3.1 In this context we may merely note the settled case law, well established since long, that mere production of sale deeds on record and mere exhibiting the same for the purpose of the record, does not and cannot establish the element of "free sale", which is the crucial test of determining whether the transaction reflected in the sale deed truly and in reality reflects a price mutually arrived at between the parties to the transaction on the basis of all factors and all considerations which the parties to the transaction would consider relevant. In other words, it is only when a party to the transaction deposes in court, and is subjected to cross-examination, can the court really arrive at the satisfaction that there were no other considerations which would detract from the principle of "free sale" and that there were no other considerations such as compelling reasons, or the existence of other reasons which would detract from the market value reflected in the sale deed one way or the other. Needless to say that this is a well established principle which does not require any extensive discussion of case law on the subject. However, to cite merely one instance, we refer to a decision of the Supreme Court in the case of Land Acquisition officer Vs. Smt. Jasti Rohini and Another, reported at JT 1995 (2) SC 339. In paragraph 7 of the said decision the Supreme Court had occasion to observe that a free sale between a willing vendor and a willing purchaser can only be established by examining either the vendor or the vendee, and that marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed. On the facts of the case, it is an admitted position that so far as these six sale deeds are concerned, neither the vendor nor the vendee has been examined. In these circumstances it cannot possibly be suggested, as is sought to be urged by learned counsel for the appellant, that these documents reflect the prevailing market value, free from all other considerations whatsoever. We are, therefore, unable to accept the contention raised on behalf of the appellants that these documents should have been made the basis of determination of the market value attributable to the lands under acquisition.

3.2 Learned counsel for the appellants, in furtherance of his contention, in the context of these six sale deeds, also sought to rely upon a decision of the Supreme Court in the case of P. Ram Reddy Vs. Land

Acquisition Officer, reported at 1995(2) SCC 305. With particular reference to paragraph 19 of the said decision it was urged that certified copies of registered documents are and should be accepted as evidence of transactions recorded in such documents, and that section 57-A is enacted to enable the parties in land acquisition cases to produce certified copies of documents to get over the difficulty of parties, in that, persons in possession of the original documents would not be ready to put them in courts. However, we may note here that in the very same paragraph the Supreme Court has further gone on to state the well established law to the effect that the mere fact that the certified copy of the document is accepted as evidence of the transaction recorded in such document, does not dispense with the need for a party relying upon the certified copies of such documents produced in court in examining witnesses connected with documents to establish their genuineness and the truth of their contents (emphasis supplied). Therefore, (the Supreme Court added further) the certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to act upon the contents of those documents unless persons connected with such documents give evidence in court as regards them and such evidence is accepted by the court as true.

4. The learned counsel for the appellants then urged that the Reference Court erred in not completely accepting and/or relying upon Exh.141. In order to appreciate this contention, we may first note that Exh.141 pertains to Survey No.687, and is a copy of an order of the Collector offering the specified area of the specific survey number to the Air Force at the specified price therein. The said order refers to the application made by the Air Force dated 15th May 1984, whereas the said order is dated 10th August 1985. The price at which the land forming part of survey No.687 offered is Rs.70,000/- per hectare (Rs.7/- per square meter).

4.1 In the context of the contention that this price determined by the said order viz. Rs.7/- per square meter can at best be the maximum price which the Reference Court could have awarded to the land holders, it is first necessary to examine the scope and context of the said document.

4.2 Firstly this document is merely a communication by the Collector conveying the decision of the State Government to offer the land to the Air Force at a specified price, of the specified area and subject to the

specified conditions.

4.3 This document is, in our opinion, merely an administrative order passed by the Collector at best, and merely constitutes an offer and does not in any manner convey either title and/or make a grant to the Air Force. Furthermore, it is merely a communication of a decision of the State Government. For all we know (and there is no evidence whatsoever on the subject) the said valuation may or may not have been accepted unconditionally by the Air Force, or whether there were further negotiations, whether the price was adjusted or negotiated, and/or whether other terms and conditions were varied, modified or added. In fact, to be more precise, there is no evidence whatsoever on the subject as to whether the Air Force in fact acquired title to this specific area of land under this specific letter of offer. We are merely expected to accept the oral assertion made by learned counsel in this context that the land was conveyed to the Air Force under the said offer or as a consequence of the said offer.

4.4 Furthermore, we cannot shut our eyes to the admitted fact, apparent on the face of the said document, that the offer was in respect of land referred to as "Padtar" i.e. "waste land". It is further clarified that this land was hitherto being used only as a common pasture land i.e. had never been cultivated and/or put to any other use.

4.5 We also cannot overlook the fact that survey No.687 represents 71 hectares i.e. over 7 lakhs square meters, out of which the said document offers to the Air Force an area of 59 hectares i.e. almost 6 lakh square meters.

4.6 This communication merely recites, with reference to the background of the decision, that the Deputy Town Planner, Baroda, had determined the market value at Rs.70000/- per hectare. As we have observed, this is a mere recital made in the said offer document, and there is no other evidence whatsoever that the recital so made in the said order is in fact based on any such valuation actually made by the specified officer. In fact, as we have observed hereinabove, this Exh.141 itself is merely placed on record, and has not proved by examining any competent witness whatsoever. In short, we cannot possibly accept that the contents of the document have been proved in accordance with the rules of evidence.

4.7 There are many other difficulties in the way of

the appellants in substantiating the contention that the price at which the land is offered should be taken as a market value of the acquired lands, at the highest.

4.8 Even after we have looked at the contents of the said documents, we cannot possibly in the remotest sense, conclude that the said offer represents a "free sale between consenting parties". On the contrary, we find that the said offer is totally lacking in all the common and prevalent aspects of a normal and commercial sale of land. This document does not disclose any element of give and take, nor any element of negotiation on the basis of which the parties can be said to have arrived at a common figure, whereupon transfer of land took place. The offer is totally silent as to whether the market value which is said to have been determined by the Deputy Town Planner, Baroda, was based on any market survey whatsoever or any attempt had been made by that authority to ascertain the prevailing market rate. We are merely expected to accept the oral assertion that the valuation had in fact been made by the Deputy Town Planner, and that such valuation is infallible. There is absolutely no evidence on record to indicate firstly whether in fact such a valuation had been made by the specified officer, and even if so made, on what basis such valuation was made. There is no indication either by way of evidence or even on the face of the document as to whether the normal practical considerations which would normally govern a transaction of sale of land had been taken into consideration while making the said offer. Furthermore, there is another aspect to which we cannot shut our eyes. Since this is an acquisition for a defence establishment, which may be presumed to have been of vital interest to the Air Force and vital to the security of the region, there may have been political considerations underlying the offer and the valuation. We clarify that when we use the phrase "political consideration", we do not use the same in any pejorative sense. We do not over-emphasis this aspect, but merely keep in the background of our minds that the necessity of the security of the region would be of considerable importance to the State Government and also to the nation, and therefore the determination of the price at which the land is offered to the Air Force Establishment would certainly not be based upon normal and commercial considerations. On the other hand, if any presumption in this arena can be justified at all, it could only be that the needs of the circumstances would require that such lands would be offered at a concessional price rather than a commercial price.

4.9 It also cannot be overlooked that the need of the Air Force was for a very large area of land indeed. The offer itself pertains to almost six lakh square meters, whereas the total area of lands under acquisition would add upto another approximately 262 hectares i.e. 26,20,000 square meters.

4.10 We must also bear in mind that the offer represented by Exh.141 was in respect of "waste land", and assuming and accepting other factors suggested by learned counsel for the appellant, we cannot possibly accept the contention that waste land of such a huge and large area can possibly be valued at the same rate as fertile irrigated agricultural land.

4.11 We have merely indicated in brief why we cannot accept the contention of learned counsel for the appellants and why we cannot act upon the offer price set out in Exh.141 as a reliable basis for determination of the market value of the acquired lands, or to treat Exh.141 as a comparable sale instance. We are, therefore, obliged to reject this contention and to hold that Exh.141 can be of no possible assistance to the appellant.

4.12 On the other hand, learned counsel for the respondents-original claimants has urged that even apart from the other intrinsic, explicite and direct evidence on record, even if the offer price reflected in Exh.141 is accepted as an offer made in respect of waste land, the Reference Court as also this court would be justified in awarding at least three times the value for fertile and irrigated agricultural lands. This submission made by learned counsel for the respondents is based on a decision of the Supreme Court in the case of Inder Singh Vs. Union of India, reported at 1993 (3) SCC page 240. In the said decision, and particularly in para 5 thereof, the Supreme Court, while discussing the evidence and while noting that such evidence is not of the best quality or of a very specific nature, nevertheless determined the market value of Rs.12000/- per acre for Ghair Mumkia land (waste land), and Rs.38000/- per acre for Barani lands (rainfed-non-irrigated land), while fixing Rs.42000/- per acre for Abi land (irrigated land). On the basis of the said decision it is contended for the land-holders that if at all it is possible to accept the offer price reflected in Exh.141 at Rs.7/- per square meter for waste land, a minimum of three times the offer price would stand justified for fertile and irrigated lands which are actually put to agricultural use. We are conscious that the decision sought to be relied upon is a

decision on the facts of the case, and does not lay down a particular principle which may be applicable in general. However, the submission made by the learned counsel for the respondents is not entirely without merit, and in our opinion, even if three times the price of waste land need not be accepted, what we can certainly accept is twice the price of waste land. On the facts of the case we find that in respect of the lands under acquisition (except two survey numbers) which are in fact fertile irrigated lands, the Reference Court has awarded Rs.14/per square meter, which is precisely twice the offer price contemplated by Exh.141 for waste land. Thus, even if the said decision is not relied upon as laying down any general principle of law, and we read the said decision only as a guideline of what can be done on the facts and circumstances of a given case, the conclusion which is eminently justifiable is that the determination of the market value by the Reference Court, even on this basis, cannot be said to be excessive in any manner whatsoever. It may be noted here that two particular survey nos. viz. survey no.688 and 699/1/B have been awarded a marginally higher market value of Rs.15/- per square meter, inasmuch as admittedly they are of equal fertility as the other lands, but also abut on National Highway no.8. This marginally higher valuation assigned by the Reference Court on account of the special factor also cannot be said to be unjustified.

4.13 As against this, learned counsel for the respondents-original claimants has sought to refer to the extensive oral and documentary evidence on record with a view to satisfy us that the market value as determined by the Reference Court is substantially on the lower side, and that on the basis of the evidence as brought on record, would justify a far higher determination. We are, however, not inclined to discuss such evidence in detail for the simple reason that the respondents-original claimants have neither preferred independent appeals from the judgement and awards of the Reference Court nor preferred any cross-objections in the present appeals. We are, therefore, not required to consider the evidence with a view to ascertain whether the Reference Court could or should have awarded a higher price. The scope of the present appeals before us is restricted to considering whether the Reference Court has already awarded an excessive amount, as contended by the appellants. Bearing in mind these factors, the attempts made by learned counsel for the respondents-original claimants can at best be regarded to be an attempt to sustain the judgement and awards in question. As already discussed by us hereinabove, we have already recorded a

finding that the market value as determined by the Reference Court cannot be considered to be excessive, and that the same is, therefore, required to be sustained.

5. Learned counsel for the appellants has next raised a number of contentions, which, we regret to observe, are not merely unsustainable, but should not have been raised in the first place, looking to the frivolity of the same. When we put to the learned counsel our view that the contentions urged by him ought not to have been raised at all, the only response he could make was to submit that he has instructions to press the contentions (following hereinafter) and that he could not go outside the brief entrusted to him by his client. We regret to note that learned counsel for the appellants appears to hold a view that he is absolutely bound by the instructions of his client, while overlooking the fact that he is also an officer of the Court. We expect that if counsel is satisfied that worthless points need not be urged, he should either be bold enough to convey the same to his clients, or at the very least, make a frank admission to the court that even when he is asked to press such frivolous points, he chooses not to do so. However, since learned counsel for the appellants has chosen not only to urge the points following hereinafter, but has also asserted that since the same are raised we are required to deal with the same, we do so.

6. Learned counsel for the appellants has urged that the respondents-original claimants would not be entitled to any amount under section 23(1-A) of the said Act. When asked to elaborate on this , his first response was to make a bare and bold assertion that the said provision would not be applicable at all. When it was pointed out to him that to countenance such submission we would have to ignore the very existence of this statutory provision, or to hold that the facts of the case would take the case of the claimants outside the purview of the said provision. To this situation, learned counsel for the appellants submitted that section 23(1-A), if construed as suggested by him, would amount to awarding interest to the land-holders at the rate of 12% per annum on the amount of compensation determined by the Reference Court. Needless to say, the very submission is without any basis in law and is devoid of any logic whatsoever. However, with a view to press home his contention and, in our opinion, to add insult to injury, learned counsel for the appellant has sought to draw support from a decision of the Supreme Court in the case of Yadavrao P. Pathade Vs. State of Maharashtra, reported at JT 1996(2) SC 240.

6.1 Before we refer to and deal with the decision in the case of Yadavrao P. Pathade (supra), we must also bear in mind the basic principle laid down by the Supreme Court as regards the interpretation of its own judgements, and the application of such decisions by the courts below. In this context the Supreme Court has laid down in the case of CIT Vs. Sun Engineering Works, reported at 1992(4) SCC 363 and elaborated the principles in paragraph 39 thereof, that the decisions of the Supreme Court must necessarily be read in the context of the questions raised and considered in that particular decision, and that the same cannot be interpreted or dealt with outside the necessary context. This decision follows an earlier decision of the Supreme Court in the case of Madhavrao Scindia, reported at 1971(1) SCC 85.

6.2 We regret to observe that the learned counsel for the appellants has chosen to rely and press his submissions on the basis of the decision in the case of Yadavrao P. Pathade (supra) entirely out of context, although it is apparent from a plain reading of the same, that it does not in any manner involve the interpretation of section 23(1-A). This decision deals with interest that may be awarded by the Reference Court under section 28 of the said Act, and also deals with the aspect as to whether interest can be awarded on solatium under section 23(2) of the said Act. While holding that no interest is payable on the amount of solatium under section 23(2), this decision of the Supreme Court overrules the earlier decision in the case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, reported in AIR 1990 SC 2192. Unfortunately, learned counsel for the appellants has chosen to read this decision entirely out of context. While this decision lays down that interest cannot be awarded on solatium, he interprets this ratio to mean that no interest is payable on the amount of substantive compensation either. Furthermore, learned counsel for the appellants is bent upon interpreting section 23(1-A) to mean that it is a provision for awarding interest on the market value and nothing else. We are clear in our minds that the compensation which is payable to a land-holder on account of acquisition of his lands is determined on the basis of market value on the date of section 4 notification, and that apart from such basic compensation representing the market value itself, other amounts are also payable to the claimant on account of different statutory provisions. Section 23(1-A) is one of such statutory provisions, which, on a plain reading, confer upon the land-holder an additional right to obtain "in addition to the market value of the land", a further

amount as compensation. Thus, what is awarded under section 23(1-A) is further compensation and not interest on compensation. Merely because the said provision uses the phrase "at the rate of 12% per annum" does not make or render such additional compensation to be "interest". In fact the Legislature has merely used a convenient and simple methodology in specifying the rate on a per cent per annum basis for the computation of such additional compensation.

6.3 Even assuming for the sake of argument that section 23(1-A) may, by considerable stretch of imagination, be construed as conferring a right to interest at the specified rate, it cannot possibly be denied that this is a statutory right in addition to the basic compensation payable on the basis of the market value of the land. This contention must, therefore, be rejected.

7. Another contention raised by the learned counsel for the appellants is that the Reference Court was in error in awarding interest on solatium under section 28 of the said Act. As already observed above by us hereinabove, this is a frivolous contention which must be rejected outright. On the facts of the case and with particular reference to the impugned judgement, we find that such is not the case here. In our view, there is no scope for any ambiguity and/or misinterpretation of the operative part of the order passed by the Reference Court. The relevant sentence reads as under:

"The opponents are also ordered to pay 30% amount of solatium on the market value of the lands."

Clearly this is merely giving effect to the provision for awarding solatium at the specified rate of 30% as specifically provided under section 23, sub-section (2) of the said Act. Nowhere in the impugned judgement and/or awards do we find the smallest reference to interest on the amount of solatium.

8. Another contention raised by the learned counsel for the appellants is that section 28 of the said Act confers a discretionary power upon the court and that the Reference Court is not bound to exercise such discretion so as to award such interest. We have no hesitation in holding that although at first sight it may so appear, in substance section 28 merely reflects the intent of the Legislature in making a specific provision, based on equity, justice and fair-play, to provide for interest

where a party has been deprived of and kept away from just payment due to it for a length of time. Section 28 merely reflects the fact situation where the Reference Court comes to a conclusion on the basis of market value determined by itself, that this is the compensation which the Collector/Land Acquisition Officer ought to have awarded as compensation in his award under section 11. Since the Collector did not in fact award this compensation, as determined by the Reference Court, and in fact made an offer under section 11 which was of a far smaller figure, the net result would be that the owner of the land has been deprived of "just compensation". It is for this reason, based upon the principles of equity, justice and good conscience, that the Legislature has made this specific provision, conferring a power, coupled with a duty and an obligation on the court to pay interest on the amount of the difference, at the rate of 9% for the first year and at the rate of 15% from the end of the first year, commencing from the day on which the LAO took possession of the land to the date of payment of such excess into Court. We have no hesitation in holding that the power conferred upon the Reference Court under section 28 is not merely discretionary, but it is coupled with a duty and an obligation to exercise such discretion. In other words, the word "may" used in section 28 should and must be read as "shall".

8.1 However, learned counsel for the appellants is bent upon interpreting section 28 so as to mean that interest at the rate of 15% would at best be awardable commencing from the date of the award under section 18, and not from the date of taking possession. In the context of such a tortuous and devious submission, all we can say is that the same is totally lacking in reasoning as also in common sense. A plain reading of section 28 is sufficient to discard this submission. A plain reading, as aforesaid, specifies (1) different rates of interest viz. 9% for the first year, and 15% commencing from the end of the first year, (2) that this rate of interest shall apply to the excess amount of compensation awarded by the Reference Court over the amount determined by the Land Acquisition Officer in his award under section 11, and (3) that such interest shall accrue from the date of taking possession upto the date of payment or deposit of such excess amount in court. Consequently this submission is also required to be rejected and we do so.

9. No other contentions have been raised.

10. In the premises aforesaid, we uphold and confirm

the impugned judgement and awards and consequently dismiss these appeals with costs.

11. The appellants are directed to deposit the amount of the award together with costs and interest in the Reference Court separately in each Reference within three months from today. Direct service is permitted.

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